

Assembly Bill No. 1407

Passed the Assembly September 9, 1999

Chief Clerk of the Assembly

Passed the Senate September 8, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor

└

CHAPTER _____

An act to amend Sections 23355.1, 23399, 24045.5, 24071.2, and 25503.2 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1407, Wesson. Alcoholic beverage licenses: auction sales: event permit: limited liability companies: license transfers: tied-house restrictions.

(1) The Alcoholic Beverage Control Act allows a retail off-sale licensee with annual United States auction sales revenues of at least \$5 hundred million to sell wine at an auction and deliver that wine to any purchaser at the auction from the vendor's licensed premises or any other storage facility under specified conditions.

This bill would make that provision also applicable to a retail off-sale licensee with annual wine auction sales revenues of at least \$5 million.

(2) The Alcoholic Beverage Control Act authorizes the issuance of an event permit to any licensee under an on-sale general license authorizing at specified events the sale of beer, wine, and distilled spirits only for consumption on property adjacent to the licensed premises and owned or under the control of the licensee, as specified.

This bill would authorize those events to be held no more frequently than one day in any single calendar quarter, instead of once in any single calendar quarter. This bill would also provide a similar authorization to any licensee under an on-sale beer and wine license.

This bill would require any event authorization to be approved by the appropriate local law enforcement agency, thereby creating a state-mandated local program.

(3) The Alcoholic Beverage Control Act sets forth procedures for applications for alcoholic beverage licenses by limited liability companies and requires limited liability companies to maintain a register of



ownership interests available for inspection by the Department of Alcoholic Beverage Control.

Existing law authorizes the Department of Alcoholic Beverage Control to issue temporary permits to transferees of licenses to operate premises during the pendency of the transfer process.

This bill would correct erroneous and obsolete cross-references in these provisions.

(4) Existing provisions of the Alcoholic Beverage Control Act, known as “tied-house” restrictions, generally prohibit manufacturers, winegrowers, bottlers, importers, wholesalers, and others from performing certain activities, with specified exceptions. Existing law allows any winegrower, wine blender, beer manufacturer, brandy manufacturer, distilled spirits manufacturer, distilled spirits manufacturer’s agent, rectifier, distilled spirits wholesaler, and beer and wine wholesaler, or their authorized agents, to perform certain services for off-sale retail licensees at or on the premises of the off-sale retail licensee with the licensee’s permission relating to stacking, rotating, servicing, and taking inventory of stock.

This bill would expand the permitted services relating to the rotation, rearrangement, and stocking of wine or distilled spirits owned or sold by the licensee.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



The people of the State of California do enact as follows:

SECTION 1. Section 23355.1 of the Business and Professions Code is amended to read:

23355.1. Notwithstanding any other provision of this division, the following acts are authorized:

(a) Deliveries of distilled spirits by a licensee to a retail licensee may be made from the vendor's licensed premises or from a warehouse located within the county in which the vendor's licensed premises are located except as permitted by Section 23383. Deliveries to a licensed importer may also be made from any point outside the state.

(b) A distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits rectifier general, or rectifier may store, bottle, cut, blend, mix, flavor, color, label, and package distilled spirits owned by another distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits rectifier general, rectifier, or a distilled spirits wholesaler, and may deliver those distilled spirits from the premises where stored, bottled, cut, blended, mixed, flavored, colored, labeled, or packaged, or from a warehouse located in the same county as that premises for the account of the owner of those distilled spirits to any licensee that owner would be authorized to deliver to under his or her own license, except to a retail licensee.

(c) A distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits rectifier general, rectifier, or distilled spirits wholesaler may store and deliver distilled spirits for the account of another licensee who would be authorized to make the delivery under his or her own license, except that licensee shall not make a delivery to a retail licensee on behalf of another licensee.

(d) A retail off-sale licensee with annual United States auction sales revenues of at least five hundred million dollars (\$500,000,000) or annual wine auction sales revenues of at least five million dollars (\$5,000,000), may sell wine consigned by any person, whether or not the auctioned wine is "vintage wine" as defined in Section



23104.6, at any auction held in compliance with Section 2328 of the Commercial Code to consumers and retail licensees and may deliver wines sold to any purchaser at that auction from the vendor's licensed premises or from any other storage facility.

SEC. 2. Section 23399 of the Business and Professions Code is amended to read:

23399. (a) An on-sale general license authorizes the sale of beer, wine, and distilled spirits for consumption on the premises where sold. Any licensee under an on-sale general license, a club license, or a veterans' club license may apply to the department for a caterer's permit. A caterer's permit under an on-sale general license shall authorize the sale of beer, wine, and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events held any place in the state approved by the department. A caterer's permit under a club license or a veterans' club license shall authorize sales at these events only upon the licensed club premises.

(b) Any licensee under an on-sale general license or an on-sale beer and wine license may apply to the department for an event permit. An event permit under an on-sale general license or an on-sale beer and wine license shall authorize, at events held no more frequently than one day in any single calendar quarter, the sale of beer, wine, and distilled spirits only under an on-sale general license or beer and wine only under an on-sale beer and wine license for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public. For purposes of this subdivision, "calendar quarter" means January 1 to March 31, inclusive, April 1 to June 30, inclusive, July 1 to September 30, inclusive, or October 1 to December 31, inclusive, of any calendar year.

(c) This section shall in no way limit the power of the department to issue special licenses under the provisions of Section 24045 or to issue daily on-sale general licenses



under the provisions of Section 24045.1. Consent for sales at each event shall be first obtained from the department in the form of a catering or event authorization issued pursuant to rules prescribed by it. Any event authorization shall be subject to approval by the appropriate local law enforcement agency. Each catering or event authorization shall be issued at a fee not to exceed ten dollars (\$10) and this fee shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

(d) At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises.

(e) The fee for a caterer's permit for a licensee under an on-sale general license or an event permit for a licensee under an on-sale general license or an on-sale beer and wine license shall be one hundred dollars (\$100) per year, and the fee for a caterer's permit for a licensee under a club license or a veterans' club license shall be a sum equal to the annual fee for an on-sale general license prescribed by Section 23320, and the permit may be renewable annually at the same time as the licensee's license. A caterer's or event permit shall be transferable as a part of the license.

SEC. 3. Section 24045.5 of the Business and Professions Code is amended to read:

24045.5. The department in its discretion may issue a temporary permit to the transferee of any license to continue the operation of the premises during the period a transfer application for the license from person to person at the same premises is pending and when all the following conditions exist:

(a) The premises shall have been operated under a license within 30 days of the date of filing the application for a temporary permit.



(b) The license for the premises shall have been surrendered pursuant to rules of the department.

(c) The applicant for the temporary permit shall have filed with the department an application for transfer of the license at the premises to himself or herself.

(d) The application for the temporary permit shall be accompanied by a temporary permit fee of one hundred dollars (\$100).

A temporary permit issued by the department pursuant to this section shall be for a period not to exceed 120 days. A temporary permit may be extended at the discretion of the department for an additional 120-day period upon payment of an additional fee of one hundred dollars (\$100) and upon compliance with all conditions required herein. A temporary permit is a conditional permit and authorizes the holder thereof to sell the alcoholic beverages as would be permitted to be sold under the privileges of the license for which the transfer application has been filed with the department.

Purchase of beer and wine by the holder of a temporary permit shall be made only upon payment before or at the time of delivery in currency or by check. Purchase of distilled spirits by the holder of a temporary permit shall be made only upon payment before or at the time of delivery in currency or by certified check. However, the holder of a temporary retail permit who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the temporary permit, and who is not delinquent under the provisions of Section 25509 as to any retail license under which he or she operates, may purchase alcoholic beverages on credit under the temporary permit.

All checks received by a seller for beer or wine purchased by the holder of a temporary retail permit shall be deposited not later than the second business day following the date the beer or wine is delivered.

A check dishonored on presentation shall not be deemed payment. The receipt by the seller or his or her agent in good faith from a holder of a temporary permit

of a check dishonored on presentation shall not be cause for disciplinary action against the seller.

Transfer of the license for which the holder of a temporary permit has filed an application shall not be approved by the department until the holder of the temporary permit has filed with the department a statement executed under penalty of perjury that all current obligations have been discharged, and that all outstanding checks issued by him or her in payment for alcoholic beverages will be honored on presentation.

It shall not be a violation of this section or otherwise grounds for disciplinary action for any licensee to extend credit to the holder of a temporary permit or to receive payment from the permittee in a manner other than authorized herein unless the seller had knowledge of the fact that the purchaser was operating under a temporary permit. Knowledge of the fact may be established by evidence, including, but not limited to, evidence that, at the time of receipt of payment or the extension of credit, the premises operated under a temporary permit were posted with the notice required by Section 23985, or the holder of the temporary permit had recorded notice as required by Section 24073, or the holder of the temporary permit had published notice as required by Section 23986, or the holder of the temporary permit had recorded and published notice pursuant to Division 6 (commencing with Section 6101) of the Commercial Code.

Refusal by the department to issue or extend a temporary permit shall not entitle the applicant to petition for the permit pursuant to Section 24011, or to a hearing pursuant to Section 24012. Articles 2 (commencing with Section 23985) and 3 (commencing with Section 24011) shall not apply to temporary permits.

Notwithstanding any other provision of law, a temporary permit may be canceled or suspended summarily at any time if the department determines that good cause for the cancellation or suspension exists. Chapter 8 (commencing with Section 24300) shall not apply to temporary permits.



Application for a temporary permit shall be on any form the department shall prescribe. If an application for temporary permit is withdrawn before issuance or is refused by the department, the fee which accompanied the application shall be refunded in full, and Section 23959 shall not apply. Fees received by the department for issuance of temporary permits shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 4. Section 24071.2 of the Business and Professions Code is amended to read:

24071.2. (a) When the ownership of 50 percent or more of the membership interests in a limited liability company required to report the issuance or transfer of memberships under Section 23405.2 is acquired by or transferred to a person or persons who did not hold the ownership of 50 percent of the membership interests on the date the license was issued to the limited liability company, the license of the limited liability company shall be transferred to the limited liability company as newly constituted. The fee for the transfer shall be equal to 50 percent of the original fee for the license, except that the minimum fee shall be one hundred dollars (\$100) and the maximum fee shall be eight hundred dollars (\$800). In situations involving the multiple and simultaneous transfer of licenses under this section, the regular transfer fee shall be required for only one of the licenses being transferred and the remainder of the licenses shall be transferred for a fee of one hundred dollars (\$100) each. All of the transfer fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund, as provided in Section 25761. Before the license is transferred, the department shall conduct an investigation pursuant to Section 23958. Any person or persons who own 50 percent or more of the membership interests of the limited liability company shall have all the qualifications required of a person holding the same type of license.

(b) No retail license shall be transferred by a limited liability company under this section unless, before the

filing of the transfer application with the department, the company initiating the transfer records, in the office of the county recorder of the county or counties in which the premises to which the license has been issued are situated, a notice of the intended transfer, stating all of the following:

(1) The name and address of the limited liability company.

(2) The name and address of the person or persons acquiring ownership of 50 percent or more of the membership interests of the limited liability company.

(3) The amount of the consideration paid for the membership interests.

(4) The kind of license or licenses intended to be transferred.

(5) The address or addresses of the premises to which the license or licenses have been issued.

A copy of the notice of the intended transfer, certified by the county recorder, shall be filed with the department together with the transfer application.

(c) Notwithstanding any other provision of this division to the contrary, a limited liability company as newly constituted by transfer under this section shall not be eligible for any new credit from any person named in Section 25509 until all delinquent payments owed by the limited liability company as formerly constituted are made, nor shall any retail licensee, by transferring its license under this section, avoid the provisions of Section 25509 with regard to 42-day or 30-day periods, percentage charges for unpaid balances, or cash-on-delivery basis.

(d) Nothing in this section shall be deemed to authorize the formation of a limited liability company composed of only one member in violation of subdivision (b) of Section 17050 of the Corporations Code.

SEC. 5. Section 25503.2 of the Business and Professions Code is amended to read:

25503.2. (a) Notwithstanding any other provision in this division, any winegrower, wine blender, beer manufacturer, brandy manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent,

rectifier, distilled spirits wholesaler, and beer and wine wholesaler, or the authorized agent or agents or representative or representatives of that licensee, may perform any of the following services for off-sale retail licensees at or on the premises of the off-sale retail licensee with the retail licensee's permission:

(1) Stack or arrange cases of the brand or brands of alcoholic beverages owned or sold by the licensee performing the service in the storeroom or warehouse where the off-sale retail licensee stores the brand or brands.

(2) Rotate the brand or brands owned or sold by the licensee performing the service on shelves and in refrigerated boxes, and rearrange bottles or packages of the brand or brands by moving the bottles or packages horizontally or vertically from shelf to shelf in the space and shelves allocated to the brand or brands. This paragraph does not permit the removal of any brand or brands of alcoholic beverages, except beer, which are owned or sold by the licensee performing the service, from the storeroom or other place belonging to an off-sale retailer for the purpose of replacing alcoholic beverages on or restocking shelves or refrigerated boxes.

(3) Take an inventory of an off-sale retailer's stock of a brand or brands of alcoholic beverages which are owned or sold by the licensee performing the service and which are in the stockroom or other place belonging to the off-sale retailer.

(4) Service the brand or brands of alcoholic beverages owned or sold by the licensee performing the service which are on shelves, fixtures, or other display pieces at the off-sale retail premises, including, but not limited to dusting bottles and shelves and refrigerated boxes allocated to the brand or brands at the retail premises. The licensees authorized to render services by this section and their agents and representatives may not price-mark individual containers of the brand of alcoholic beverages, except beer, owned or sold by the licensee performing the service, except for individual bottles used on floor displays.



(5) Rotate or rearrange the brand or brands of wine or distilled spirits owned or sold by the licensee on, in, or among permanent shelves, permanent fixtures, refrigerated boxes, or floor or other displays or display pieces; stock the brand or brands onto or into floor or other displays or display pieces; and stock the brand or brands onto or into permanent shelves, permanent fixtures, or refrigerated boxes for the sole purposes of the introduction of new products, the resetting or rearrangement of existing products, or the setting or arranging of new stores. Incidental touching or rearrangement of the brand or brands of another licensee by a licensee performing any of the services authorized by this paragraph for the sole purpose of accessing permanent shelves, permanent fixtures, and other spaces allocated to the licensee performing the service shall not be deemed to be a violation of any provision of this division provided the other licensee's brands are not removed from spaces allocated to that licensee. Nothing in this paragraph permits stocking permanent shelves, permanent fixtures, or refrigerated boxes for regular inventory replenishment.

(b) Notwithstanding any other provision in this division, any beer manufacturer or beer and wine wholesaler, or the authorized agent or agents or representative or representatives of that licensee, may perform any of the services specified in paragraphs (1) to (4), inclusive, of subdivision (a), with respect to beer, for on-sale retail licensees at or on the premises of the on-sale retail licensee with the retail licensee's permission.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.



Approved _____, 1999

Governor

